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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,746	09/11/2003	Esther Dabney	1266-27	3466
23117 7590 11/03/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
RANKINS, WILLIAM E				
ART UNIT		PAPER NUMBER		
3696				
MAIL DATE		DELIVERY MODE		
11/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/659,746

Applicant(s)

DABNEY ET AL.

Examiner

WILLIAM E. RANKINS

Art Unit

3696

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2009.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20, 23-27 and 38 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 20, 23-27 and 38 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Claims 20, 23-27 and 38 are pending. Claims 19, 21 and 22 are canceled and the remaining claims are amended.

Response to Arguments

1. Applicant's arguments, see pg. 7, filed 09/03/2009, with respect to claims 19-27 and 38 have been fully considered and are persuasive. The 112 rejections of 03/04/2009 have been withdrawn.
2. Applicant's arguments filed 09/03/2009 have been fully considered but they are not persuasive. With regard to the 102(b) rejection of claims 20 and 38 by Churchill the examiner asserts that Churchill discloses the feature at issue. The applicant argues that Churchill does not further extend an already extended auction. The examiner asserts that bids submitted in the last X minutes of the auction that the auction will extended for another Y minutes where the min and max X is less than the min and max Y. Churchill discloses that this is done to discourage bidders who attempt to "swoop in" in the last few minutes to win the auction (Col. 44, lines 38-47). The examiner asserts that Churchill does not limit the number of times the auction can be extended. Applicant also

argues that Churchill does not disclose "...allowing authorized seller to accept bids and unilaterally end auction-style listings before said end times", however, the examiner asserts that Churchill teaches this feature as disclosed in the advisory action (Col. 42, lines 52-60). In addition, the examiner notes that the term "allowing" makes the claim element not positively recited and therefore does not warrant consideration by the examiner in the prosecution of the claim.

3. Applicant's arguments filed 09/03/2009 have been fully considered but they are not persuasive. With regard to the 103(a) rejection of claim 24 by Churchill in view of Elias and claims 25-27 by Churchill in view of Fujiwara, Gujral and applicant admitted prior art, the examiner asserts that because of the term "allowing", the claimed feature is not positively recited and therefore does not warrant consideration by the examiner in the prosecution of the claim.

4. Applicant's arguments, see pgs. 8-9, filed 09/03/2009, with respect to claim 23 have been fully considered and are persuasive. The 103(a) rejection of 03/04/2009 has been withdrawn.

A review of the claims and updated search necessitated the rejections below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Churchill et al. (7,461,022) in view of Maudlin (2005/0289043).

As per claim 23;

Churchill discloses:

In an online network-connected computer system of the type that receives requests transmitted over a network from users and responds by providing data over said network for display by said requesting users, a method of performing computer based processes to provide data over the network relating to online auction-style listings, the method comprising (See claim 20 rejection):

maintaining a database of items available for auction-style listing (Col. 8, lines 4-13);

receiving further requests representing offers to purchase the item over the network that lead to change in state of the ownership of the item (Col. 43, lines 44-46).

Churchill does not disclose:

receiving requests allowing sellers to specify whether items are to be listed in said database as conditional or binding transactions;

in response to user requests received over the network, generating and sending data over the network representing displays of (a) the conditional or binding characteristic of an item listing, and (b) at least some other information relating to the item; and

However, Maudlin discloses a seller-defined auction system where the seller states any contractual agreements which must be made for the bids to be binding (Para. 0094).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of this invention to combine the methods of Churchill and Maudlin in order to maximize profits for the seller. Churchill also states that the auction system can apply to different types of auctions.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William E. Rankins whose telephone number is 571-270-3465. The examiner can normally be reached on M-F 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hani Kazimi can be reached on 571-272-6745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William E Rankins/
Examiner, Art Unit 3696
10/27/2009

/Hani M. Kazimi/
Primary Examiner, Art Unit 3691